IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1782 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
HIMMATBHAI POPATBHAI & ANR

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Appearance :
MR IM PANDYA APP for Appellant
MR JM BUDDHBHATTI for Opponents

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 18/04/2007

ORAL JUDGMENT : (Per : HONOURABLE MR. JUSTICE J.R.VORA)

1 This Criminal Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge, Camp at Mahuva, Bhavnagar, in Session Case No. 177 of 2004, whereby both the respondents herein, who were accused in the said Session Case, came to be acquitted by the Trial Court for the offences punishable under Sections 498-A, 306 to read with Section 114 of the Indian Penal Code.

2 Heard learned APP Mr. I.M. Pandya for the appellant – State and learned Advocate Mr. J.M. Buddhbhatti for the respondents. Leave to Appeal granted. Appeal is Admitted. Learned Advocate for the respondents Mr. Bhuddhbhatti waives for both the respondents. Learned APP as well as learned Advocate for the respondents submit that the matter be heard finally at this stage as the record is available and learned Advocate for the respondents has assisted this Court with copies of the evidence on record and copies of each of the documents produced before the Trial Court. This Appeal, therefore, is heard finally.

3 According to the prosecution case, a complaint came to be filed by Laljibhai Karmsibhai Sanetra of Savarkuntla, District Amreli, before the Deputy Superintendent of Police at Mahuva, on 24th of June, 2004. Accordingly he had three children. Out of which, first two were

sons and third one was daughter, named as, Jyotsnaben. Jyotsnaben was married to accused No.1 Himmatbhai Popatbhai, according to rites and customs at Savarkuntla before six months of the date of the incident. On the day before the incident, Jyotsnaben was taken to Savarkuntla by complainant Laljibhai Karmsibhai Sanetra, her father, who stayed at parental home for two days. At that period of time, she conveyed to her parents and brother that her husband accused No.1 and her mother-in-law Labhuben were taunting her that she did not know cooking and causing waste of grain, etc. It was also conveyed to them that she was given physical beating and mental torture as well by both the accused. Jyotsnaben was persuaded by her parents, and on such persuasion, she was prepared to resume her in-laws house. On the day of the incident, i.e. 24th of June, 2004, Champaben, mother of deceased Jyotsnaben, had been to village Taveda and complainant Laljibhai, father of Jyotsnaben, was at home. In the morning at about 10.30 a message by phone came on one Nagjibhai for complainant Laljibhi that her daughter had got burn injuries and had died. Therefore, complainant Laljibhai and other relatives Pravin Lakhabhai, Rameshbhai, Vallabhbhai and Haresh Madhubhai, etc went to Mahuva Government Hospital and thereafter Champaben, mother of deceased Jyotsnaben and others were also reached there. When they noticed that body of Jyotsnaben they found that she was badly burnt. From her

husband, complainant Laljibhai came to know that on earlier day Labhuben has scolded Jyotsnaben, and on that account, in toilet she poured kerosene and ignited herself with fire. This complaint was recorded by PW-3 Shantilal Junjibhai Sadat, PSO, Mahuva Police Station, by Crime Register No. 132 of 2004. Investigation was carried out and charge sheet was filed against both the accused in the Court of learned JMFC. The case was committed to the Court of Sessions at Bhavnagar and was registered as Session Case No. 177 of 2004. The Learned Additional Sessions Judge, Camp at Mahuva, Bhavnagar, framed charge against both the accused on 1st of December, 2004 at Exhibit-2. Both the accused pleaded not guilty. Prosecution therefore examined three witnesses. Complainant Laljibhai Karamsibhai Sanetra as PW-1, is examined at Exhibit-11; PW-2 Champaben Khimjibhai, mother of the deceased, is examined at Exhibit-13; PW-3 Shantilal Junjibhai Sadat, PSO, Mahuva Police Station, is examined at Exhibit-16, who registered the offence. In addition to this, the prosecution also produced documentary evidence, i.e. complaint, panchnama of scene of offence, inquest panchnama, PM report, opinion of Forensic Science Laboratory, etc. The learned Trial Judge noted in the judgment that no further statement was recorded of any of the accused as there was no circumstance in evidence to be brought to the notice of the accused under Section 313 of the Code of Criminal

Procedure. After hearing both the learned Counsels, the Trial Court acquitted both the accused for the above said charges as aforesaid and, hence, this Appeal by the State.

4 Learned APP Mr. Pandya has vehemently opposed the judgment and order impugned especially on the ground that the span of married life was only about six months and the incident of suicide has occasioned. Learned APP has further submitted that though both the witnesses i.e. parents of the deceased had not supported the prosecution case, the statutory presumption arises about the death in suspicious circumstances in pursuance of the provision of Section 113-A of the Indian Evidence Act. While learned Advocate Mr. Bhuddhbhatti for the respondents has supported the judgment and order impugned in this Appeal.

5 We have gone carefully through the Record and Proceedings of the Trial Court, which is available with us. We are equipped with the copies of the evidence on record and other documents and we have finally examined this Appeal carefully and have scrutinized the evidence adduced during trial. We have considered all the vital features of the case and probabilities arising out of the circumstances from the evidence recorded during trial.

6 While going through the evidence, it is clear that PW-1 Laljibhai Karamsibhai, examined at Exhibit-11, deposed that deceased Jyotsnaben aged 23 had married to accused No.1 at Savarkuntla. She was educated and was staying with her husband and her mother-in-law. Jyotsnaben had been to Savarkuntla on the eve of Bhim Agiyaras, but she did not convey anything about any cruelty that might have been meted out to her by the accused. The witness further stated that it was not conveyed by deceased Jyotsnaben to them that the accused were taunting her and were physically beating her and thus PW-1 father of the deceased has not supported the prosecution case and the complaint which he preferred before Mahuva Police Station which is produced on record at Exhibit-12. He was declared hostile by the prosecution and though he admitted that the matter was compromised but denied that on account of that he deposed untrue facts to save the accused. Likewise, PW-2 Champaben Khimjibhai, mother of the deceased, is examined at Exhibit-13, also did not support the prosecution case and deposed that though Jyotsnaben died on account of burn injuries which she received and she committed suicide, but she denied the fact that Jyotsnaben has conveyed to them that Jyotsnaben had to undergo cruelty executed by the accused. She was also declared hostile but she did not support the prosecution case. Third witness Shantilal Junjubhai Sadat is examined at Exhibit-16 and he stated that at the relevant time

on 24.6.2004 he was in-charge of Mahuva Police Station and by order of the Deputy Superintendent of Police, he registered the offence against the accused by Crime Register No. 132 of 2004 for the offence punishable under Section 306 IPC. He identified the complaint at Exhibit 12.

7 It appears that the accused also before filing of the complaint, informed police that Jyotsnaben had committed suicide and that entry appears to have been made to the concerned record of Police Station, but no inquiry appears to have been proceeded in pursuance of the said entry. Panchnama of scene of offence is produced at Exhibit-22, Inquest Panchnama is produced at Exhibit-23, PM Note is produced at Exhibit-25 and accordingly cause of death is shown to be cardio respiratory arrest due to severe burns led to hypo-volenic shock and Opinion of Forensic Science Laboratory is produced at Exhibit-30. These documents are not useful to the prosecution case.

8 From the above, it is clear that there is no iota of evidence against any of the accused for the offences punishable under Sections 498-A and 306 of the IPC. Two important witnesses i.e. parents of the deceased, examined by the prosecution, have not supported the prosecution case. Death on account of burn injuries and suicidal death

appears to have not been challenged by the defense. True that, the marriage span of the spouse was only six months, but to invoke the provision of Section 113-A of the Evidence Act, it must be proved that the victim has been subjected to cruelty and then the court may presume that such suicide by the victim had been abated by her husband or relatives of the husband. To invoke provision of presumption as engrafted under Section-113A of the Evidence Act, necessary it is to prove that the victim was subjected to cruelty. When we appreciated the evidence, as aforesaid, we found that there is no iota of evidence against any of the accused that deceased Jyotsnaben was subjected to cruelty by any of the accused. Reasoning, therefore, assigned by the Trial Judge requires no interference and conclusion arrived at for the acquittal of the accused is not exceptionable. The Appeal therefore has no substance.

9 In view of above, the Appeal stands dismissed.

(J. R. VORA, J.)

(BANKIM .N. MEHTA, J.)

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